

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 96-205  
Table of Allotments, ) RM-8862  
FM Broadcast Stations. )  
(Jupiter and Hobe Sound, )  
Florida) )

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: September 27, 1996**

**Released: October 4, 1996**

**Comment Date: November 25, 1996**

**Reply Date: December 10, 1996**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Jupiter Radio Partners ("Jupiter Radio"), permittee of Station WTPX(FM), Jupiter, Florida, proposing the substitution of Channel 288C2 for Channel 288C3 at Jupiter. Jupiter Radio also requests reallocation of Channel 288C2 from Jupiter, Florida, to Hobe Sound, Florida, and modification of its construction permit to specify Hobe Sound as its community of license. Jupiter provided information in support of the proposal and stated its intention to file an application for Channel 288C2 at Hobe Sound.

2. Jupiter Radio seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM & TV Authorizations to Specify a New Community of License ("Modification"), 4 FCC Rcd 4870 (1989), recon. denied in part, 5 FCC Rcd 7094 (1990). Jupiter Radio states that the requested reallocation to Hobe Sound is mutually exclusive with the existing allotment of Channel 288C3 at Jupiter. In support of its proposal, Jupiter Radio states that the reallocation of Channel 288C2 from Jupiter (population 24,986) to Hobe Sound (population 11,507) would provide Hobe Sound with its first local transmission service, and would not deprive Jupiter of its sole local aural transmission service.<sup>1</sup> Jupiter Radio notes that

<sup>1</sup> The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

Stations WJBW(FM) and WMLZ(AM) are licensed to Jupiter. Jupiter Radio contends that the "Urbanized Policy" does not apply to its proposal and that no special showing is necessary since Jupiter is located within the West Palm Beach, Florida urbanized area and Hobe Sound, is located within the Stuart, Florida urbanized area. Therefore, Jupiter Radio is not seeking to change the community of license of Station WTPX from a small community outside an Urbanized Area to a community within a larger nearby Urbanized Area. The Stuart, Florida urbanized area has a considerably smaller population (1990 population - 80,069) than the West Palm Beach, Florida urbanized area (1990 Census population - 794,848). Jupiter Radio claims that a preference for a first local service is warranted in this case since Hobe Sound has no broadcast stations assigned to it. Jupiter Radio states its intention to relocate its transmitter site, acknowledging that there will be a gain and loss area. The area gained by the proposal will be 138% or 3,535 square kilometers and the loss area will be 24% or 1,026.9 square kilometers. According to Jupiter Radio, the loss area is located within the West Palm Beach urbanized area which receives service from more than five stations and is considered to be a well-served area. Further, since Station WTPX has never been on the air, the change in community of license will not cause any disruption to existing service within the loss area. Since Jupiter will continue to receive local service from two commercial broadcast stations, Jupiter Radio contends that its proposal will not deprive Jupiter of its only local transmission service.

3. In further support of its proposal, Jupiter Radio states that Hobe Sound is a Census Designated Place that had a 1990 population of 11,507; an increase over the 1980 population of 6,822. Hobe Sound is a bona fide community with its own post office and two zip codes. There is a Hobe Sound Chamber of Commerce, a local fire station, elementary schools, a nursing home and plans for the construction of a new and larger library facility to accommodate the community's growing population. The Hobe Sound Chamber of Commerce prints a community guide which includes information on the municipal services and establishments in Hobe Sound. Active community organizations such as the Community Coalition of Hobe Sound, the Hobe Sound Women's Club, an AARP chapter that meets at the Hobe Sound Civic Center and the Hobe Sound chapter of the Rotary Club, serve the community. The community also has several parks, the Hobe Sound Beach, and Hobe Sound Nature Center, Inc. In addition to the Hobe Sound public elementary schools, the community includes Hobe Sound Christian Academy, the Hobe Sound Bible College and a campus of Palm Beach Atlantic College.

4. In accordance with Commission policy, if a proponent intends to relocate its authorized facility from a rural community to a suburban community that is adjacent to an urbanized area, and from which its intended operation would place a city grade (70 dBu) signal over 50% or more of the urbanized area, the petitioner is required to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). This proposal presents a slightly different approach to the Commission's Change of Community policies. In this instance Jupiter Radio is proposing to move from Jupiter, Florida, which is located inside the West Palm Beach urbanized area to Hobe Sound, Florida, which is located in the Stuart urbanized area. According to a staff analysis, the construction permit for Station WTPX provides a 70 dBu signal over 10% of the Stuart urbanized area and 40% of the West Palm Beach urbanized area.

Station WTPX operating on Channel 288C2 at Hobe Sound would provide a 70 dBu signal to 100% of the Stuart urbanized area. From its selected site, Station WTPX would no longer provide 70 dBu coverage to any part of the West Palm Beach urbanized area. Under the circumstances, we believe that based upon the increase of coverage that will be provided to the Stuart urbanized area by Station WTPX, that Jupiter Radio's request to change its community of license is subject to the provision of additional information responsive to a Tuck analysis to show that Hobe Sound is sufficiently independent of the Stuart urbanized area to merit a first local service preference or whether it should be credited with all of the authorized aural services in the Stuart urbanized area.

5. Based on the above information, we initially believe that the public interest would be served by proposing to substitute Channel 288C2 for Channel 288C3, reallocate the channel from Jupiter, Florida, to Hobe Sound, Florida, and modify the construction permit for Station WTPX to specify operation on Channel 288C2 at Hobe Sound. Unless demonstrated otherwise, Jupiter Radio's proposal would result in a first local service for Hobe Sound while not depriving Jupiter of local service. Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 288C2 at Hobe Sound, Florida, or require Jupiter Radio to demonstrate the availability of an additional equivalent channel for use by such parties.

6. Channel 288C2 can be allotted to Hobe Sound consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at Jupiter Radio's specified site.<sup>2</sup> Although Channel 288C2 is currently short spaced to Channel 288A, Station WYMR, Sebring, Florida, the license for Station WYMR was modified to specify operation on Channel 289C3 in MM Docket No. 93-65. See 11 FCC Rcd 4684 (1996). Therefore, grant of a final license for Station WTPX, Hobe Sound, may be withheld until Station WYMR is licensed on Channel 289C3.

7. Accordingly, the Commission believes it would serve the public interest to solicit comments to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Jupiter, Florida	258A, 288C3	258A
Hobe Sound, Florida	-----	288C2

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are

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<sup>2</sup> The coordinates for Channel 288C2 at Hobe Sound are 27-16-03 and 80-12-10.

incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **November 25, 1996**, and reply comments on or before **December 10, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Joseph E. Dunne III  
150 E. Ninth Street, Suite 300  
Durango, Colorado 81301

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.